

## **§ 4901.17**

expected to be sent. The maximum extension for responding to a disclosure request shall be 10 working days, and the maximum extension for responding to an appeal shall be 10 working days minus the amount of any extension on the request to which the appeal relates.

### **§ 4901.17 Exhaustion of administrative remedies.**

If the disclosure officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies shall be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow the PBGC additional time to act as provided in FOIA, processing of the request or appeal shall continue and the requester shall be so advised.

## **Subpart C—Restrictions on Disclosure**

### **§ 4901.21 Restrictions in general.**

(a) *Records not disclosable.* Records shall not be disclosed to the extent prohibited by—

(1) 18 U.S.C. 1905, dealing in general with commercial and financial information;

(2) Paragraph (b)(1) of FOIA, dealing in general with matters of national defense and foreign policy; or

(3) Paragraph (b)(3) of FOIA, dealing in general with matters specifically exempted from disclosure by statute, including information or documentary material submitted to the PBGC pursuant to sections 4010 and 4043 of ERISA.

(b) *Records disclosure of which may be refused.* Records need not (but may, as provided in § 4901.5(b)) be disclosed to the extent provided by—

(1) Paragraph (b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Paragraph (b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

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(3) Paragraph (b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Paragraph (b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Paragraph (b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Paragraph (b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Paragraph (b)(9) of FOIA, dealing in general with information about wells.

### **§ 4901.22 Partial disclosure.**

If an otherwise disclosable record contains some material that is protected from disclosure, the record shall not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle shall be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

### **§ 4901.23 Record of concern to more than one agency.**

If the release of a record in the custody of the PBGC would be of concern not only to the PBGC but also to another Federal agency, the record will be made available by the PBGC only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the PBGC in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the requester will be so notified.

### **§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.**

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that the PBGC has reason to believe contains such information, unless—

(1) Access to the information is denied;

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(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law other than FOIA; or

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case the PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter shall, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph shall expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided therefor.

(c) *Notification to submitter of disclosure request.* When disclosure of information subject to this section may be made, the disclosure officer or (where disclosure may be made in response to an appeal) the General Counsel shall promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this paragraph, the requester shall be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure should specify all grounds relied upon for opposing disclosure of any portion(s) of the information under subsection (b) of FOIA and, with respect to the exemption in paragraph (b)(4) of FOIA, demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted should be certified or otherwise sup-

ported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph shall be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the disclosure officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the disclosure officer (or General Counsel) shall give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification shall, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy shall be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The disclosure officer or the General Counsel shall promptly notify the submitter if a requester brings suit seeking to compel disclosure.

### Subpart D—Fees

#### §4901.31 Charges for services.

(a) *Generally.* Pursuant to the provisions of FOIA, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA from the PBGC, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in §4901.32 of this part. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) *Direct costs* means those expenditures which the PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under FOIA and this part. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or